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By email

13 September 2021

Freedom of Information Act (FOIA) 2000 – Request for Information

Reference: FOI 202109098

Dear [REDACTED]

Thank you for your request under the Freedom of Information Act.

We have set out below details of the information we hold in relation to each part of your request. As this is publicly available information on our website we have included links to the relevant webpages.

Please do let us know if our understanding of your any part of your request is not correct and if any clarification of the information you are requesting would be helpful.

As the information you have requested appears to relate to our enforcement powers you may find it helpful to read Ofwat's approach to enforcement guidance, which can be accessed via the link below. This gives additional context to the information we have provided and our description of this:

<https://www.ofwat.gov.uk/wp-content/uploads/2015/11/Approach-to-enforcement.pdf>

In summary, sections 18–22E of the Water Industry Act 1991 (WIA91) provide that Ofwat may take enforcement action against the companies it regulates where these companies either fail to comply with their statutory duties and licence obligations, or are likely to do so. Each of these sections is summarised below.

Enforcement orders – section 18 WIA91

If we (or the Secretary of State) are satisfied that a regulated company is contravening, or is likely to contravene, any condition of its appointment or licence or any statutory or other requirement that we can enforce under section 18 of the WIA91, we are under a duty to impose an enforcement order.

Exceptions to the duty to enforce – section 19 WIA91

The duty to enforce is subject to certain exceptions set out in section 19 WIA91. These exceptions include:

- a) if the contraventions or likely contraventions are trivial in nature, or the extent to which the company caused or contributed to a contravention was trivial;
- b) if the company has given and is complying with an undertaking to take all appropriate steps to ensure compliance.

Financial penalties – section 22A WIA91

Under section 22A WIA91, we can impose financial penalties on water companies if they are in breach of their statutory duties or licence conditions. The maximum penalty that we can levy is 10% of the regulated company's turnover (in a relevant year).

In relation to some, specific obligations water companies have, Ofwat has powers to issue a "direction" to the company requiring it to take or stop taking particular action in order to comply with its obligation. Such a direction is enforceable, as per above provisions, if not followed.

1. Number of companies who self-reported to Ofwat for each of the most recent 4 years that this information is available. Please break down this information by year and organisation, if possible

Self-reporting by water companies to Ofwat takes a number of different forms. All companies (including small water companies which have revenues of less than £10.2 million) need to submit a single, annual performance report to us. The annual performance report includes a baseline level of information and will use audited information that can be reconciled back to statutory accounts where appropriate. This has been a requirement since 2015-16.

We ask companies to submit and publish an annual performance report because their statutory accounts are not detailed enough for us to assess their performance. The reports should be accessible to all stakeholders so that they show how the sector is delivering for its customers, environment and wider society.

More information about this reporting requirement is set out on the following webpage:

<https://www.ofwat.gov.uk/regulated-companies/company-obligations/annual-performance-report/>

Notwithstanding the above we have understood this part of your request relates to details about companies that have self-reported to us for enforcement purposes. That is where a company has come forward itself to make us aware of a potential breach of its licence or statutory obligations.

There are a number of ways in which possible breaches or failures by companies to meet their obligations may come to our attention. Contraventions can come to our attention through several avenues – for example:

- a company self-reporting – if a company finds a possible contravention or fails to meet statutory standards, we expect it to advise us immediately it becomes aware of any potential problem;
- publicly available information, including the information companies provide to their customers;
- information from other stakeholders (including other regulators);
- customer complaints and enquiries;
- whistle-blowers;
- market research; or
- information received from investors.

We have a webpage which details the enforcement cases that Ofwat has carried out going back to 2006.

<https://www.ofwat.gov.uk/regulated-companies/investigations/closed-cases/enforcement-cases/>

Since 2017 we have opened and closed 4 enforcement cases.

In addition we have published a direction and two proposals to make a final enforcement order to Tor Water Limited. Details of these can be accessed via the link below:

<https://www.ofwat.gov.uk/wp-content/uploads/2020/01/20-01-09-NON-CONFIDENTIAL-Final-Tor-Water-proposal-to-make-an-enforcement-order.pdf>

We opened these cases on the basis of publicly available information, information from other regulators or complaints/allegations from third parties.

The most relevant example of a company self-reporting relates to our investigation into Southern Water's wastewater treatment sites and the company's reporting of relevant compliance information to us:

<https://www.ofwat.gov.uk/wp-content/uploads/2019/10/Ofwat%E2%80%99s-final-decision-to-impose-a-financial-penalty-on-Southern-Water-S....pdf>

Paragraph 3.1 of our final decision to impose a financial penalty on Southern Water explains the background to the opening of this case, including highlighting that Southern Water told us about the Environment Agency's investigation into the company in early 2017.

Paragraphs 3.9 and 3.10 explain that, during our investigation, Southern Water provided us with a report about its own findings highlighting irregularities in its wastewater sampling processes.

In addition to the above, on occasion, we have examples where a company will proactively make us aware of a service failure that it has identified and is taking steps to address – for example billing errors, supply interruptions a company is experiencing / has experienced for a particular area, etc. These may or may not relate to delivery areas where a company has specific legal obligations, but typically these are not examples of a company reporting to us

that it has breached an enforceable obligation. If further investigation of the matter by us results in us considering it to be a breach of an obligation it would be opened as a formal enforcement case as per above.

2. Number of warnings and enforcement notices issued by Ofwat for each of the most recent 4 years that this information is available. Please break down this information by year and the type of notice.

3. Number of orders issued by Ofwat for each of the most recent 4 years that this information is available. Please break this down by year and type of order

4. Number of undertakings issued by Ofwat for each of the most recent 4 years that this information is available. Please break this down by year and type of undertaking

The table below shows the type of enforcement action we have taken in the cases that we have investigated since 2017. Before we either impose a financial penalty, make an enforcement order and /or accept formal undertakings from the company, we first invite representations or objections to notices of our proposal to take such action. This is then followed up with a final notice which confirms our decision.

In the case of Tor Water detailed below we did not issue a notice confirming the proposal to make an enforcement order because on 17th February 2020 we revoked the company's licence:

https://www.ofwat.gov.uk/wp-content/uploads/2020/02/Notice-of-Revocation-Tor-Water_Redacted.pdf

Date	Company	Case description	Decision document / Outcome	Relevant weblinks
08/08/18	Thames Water	Investigation into Thames Water's failure to meet its leakage performance commitments	1. Imposition of a financial penalty on Thames Water; and 2. Section 19 undertakings	https://www.ofwat.gov.uk/investigation-thames-waters-failure-meet-leakage-performance-commitments/
May to July 2019 and Jan 2020	Tor Water	Various compliance failures	1. Notice of a proposal to make a final enforcement order (the Original Proposal); 2. Direction to Tor Water Ltd; and 3. Revised proposal to make a final enforcement	https://www.ofwat.gov.uk/wp-content/uploads/2019/07/19-07-26-Notice-of-proposal-to-make-Final-Enforcement-Order.pdf https://www.ofwat.gov.uk/wp-content/uploads/2020/02/Notice-of-Revocation-Tor-Water_Redacted.pdf

			order	content/uploads/2019/05/20190529-Direction-to-Tor-Water.pdf https://www.ofwat.gov.uk/wp-content/uploads/2020/01/20-01-09-NON-CONFIDENTIAL-Final-Tor-Water-proposal-to-make-an-enforcement-order.pdf
10/10/19	Southern Water	Investigation into Southern Water's wastewater treatment sites and the company's reporting of relevant compliance information to us	1. Imposition of a financial penalty on Southern Water; and 2. Section 19 undertakings	https://www.ofwat.gov.uk/investigation-into-southern-waters-wastewater-treatment-sites-and-the-companys-reporting-of-relevant-compliance-information-to-us/
27/07/20	Thames Water	Investigation into whether Thames Water contravened the Wholesale Retail Code	Thames Water addressed the concerns that our investigation identified and in November 2020 we decided to close our investigation	https://www.ofwat.gov.uk/investigation-into-whether-thames-water-is-contravening-the-wholesale-retail-code/
01/07/21	Wessex Water	Investigation into Wessex Water's compliance with its transfer pricing obligations	Wessex Water took steps to address our concerns about its approach to setting transfer prices by taking a number of steps and giving assurances.	https://www.ofwat.gov.uk/investigation-into-wessex-waters-compliance-with-its-transfer-pricing-obligations/

5. **Number of injunctions, if applicable, issued by Ofwat for each of the most recent 4 years that this information is available. Please break this down by year**
6. **Number of prosecutions for each of the most recent 4 years that this information is available. Please include information on the party prosecuted (name of organisation or individual, type of offence, place/court of prosecution, outcome, size of fine if given)**

Ofwat does not have criminal investigation powers and has therefore not issued any injunctions or undertaken prosecutions during this period.

7. **Number of front line enforcement officers employed by Ofwat for each of the most recent 4 years that this information is available. Please break this down by year**

Within Ofwat we work in 'clusters' and people from different clusters collaborate in project teams, so that each of our projects has the right resources and set of skills. The webpage via the link below explains more on how we work:

<https://www.ofwat.gov.uk/grads/how-we-work/>

For an enforcement case we will typically have a case lead that is supported by a project team comprising staff from other professions and clusters.

Our planning assumptions over recent years have been based around having approximately 4 full time equivalent staff to delivery our enforcement work.

If you have any queries or concerns with regard to the content of this letter please do contact us, quoting the reference number. If you are unhappy with how your request has been responded to you can request an internal review by writing to foi@ofwat.gov.uk.

If you are still not satisfied following our response to an internal review, you have the right to complain to the Information Commissioner's Office under section 50 of the Freedom of Information Act 2000.

Further information concerning your rights is available from the Information Commissioner's Office at:

<https://ico.org.uk/>

or

The Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow

Yours sincerely,

Ofwat's Information Governance Team